UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WORLD COLOR (USA) CORP., a wholly owned subsidiary of QUAD/GRAPHICS, INC., Employer, and GRAPHIC COMMUNICATIONS CONFERENCE OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 715-C, Charging Party.	)	Case No.: 32-CA-062242

CHARGING PARTY'S REPLY TO RESPONDENT'S STATEMENT OF POSITION

The Charging Party, the Graphic Communications Conference of the International Brotherhood of Teamsters ("GCC" or "Union"), by and through its undersigned counsel, submits this Reply to Respondent Quad/Graphics, Inc.'s Statement of Position in order to address the threshold issue of the scope of the matters under review by the National Labor Relations Board ("NLRB" or "Board") on remand.

ARGUMENT

It is quite ironic that Quad/Graphics, Inc. ("Respondent," "Employer," "Company" or "Quad") argues in its Statement of Position that it is the General Counsel and the Union that are trying to expand the scope of the Complaint and the issue remanded to the Board for reconsideration, because it is Quad that opened the door to its entire uniform policy by arguing that its prohibition on hats should be lawful because employees can "accessorize" with union insignia. In its penultimate statement on this case, the U.S. Court of Appeals for the District of Columbia made it very clear what was to be the issue that the Board should consider on remand:

> Although the policy required employees to wear a Quad hat rather than any other hat—including a union hat—**the company argued that it allowed employees to "bear union insignia" on the Quad hat by accessorizing it in an appropriate manner**. We therefore grant the petition for review and remand to the NLRB for reconsideration.

World Color (U.S.A.) Corp. v. N.L.R.B., 776 F.3d 17, 21 (D.C. Cir. 2015) (emphasis added).

In fact, the entire thrust of the D.C. Circuit's short opinion is that on remand, the Board needs to determine whether Quad's employees can fulfill their Section 7 rights by accessorizing their Quad hats with union insignia:

> Although the hat policy restricts the type of hat that may be worn**, it does not say anything about whether union insignia may be attached to the hat**. . . . World Color has consistently argued that the hat is part of its uniform policy and that **World Color's policies therefore facially allow an employee to adorn their Quad hat with union insignia**. Indeed, World Color made this argument before the Board, asserting that "**the hat policy does not expressly prohibit employees from wearing union insignia at work, on their hat or otherwise**," and noting that "**the Government presented no evidence that Quad's policy prevents employees from wearing union insignia on their hats**. . . the policy simply prevents employees from replacing the Company hat with any hat of their own choosing." Respondent Quad/Graphic Inc.'s Brief in Support of its Exceptions to Decision and Order of the Administrative Law Judge at 15–16, *World Color*, 2014 WL 559195.

Id. at 20 (emphasis added).

Thus, the issue on remand is whether Quad is allowed to maintain a ban on baseball caps other than Quad-logoed hats because the Company allows "employees to 'bear union insignia' on the Quad hat by accessorizing it in an appropriate manner." *Id.* at 21. Accordingly, any and all issues related to employees' ability to accessorize their Quad hats with union insignia are within the scope of the issue remanded by the DC Circuit to the Board and within the scope of the Complaint and the unfair labor practice charge filed by the union.

As to the merits, nowhere in Quad's papers to the Board does Quad present any evidence or provide any argument that employees are allowed to accessorize the Quad hat with union insignia. This is not surprising because Quad does not permit its employees to accessorize their

Quad hats with union insignia. Quad admitted that employees are not permitted to affix pins, buttons or patches bearing union insignia to their Quad hats. *See* (Rec. at 32:17-19 ("Buttons and pins are prohibited on the production floor because they can fall into pieces of the equipment.")); (Oral Arg. Tr. at 7:6-8; 53:19-24 (suggesting that patches may be prohibited because they "alter[] the nature and character of the uniform").) In one breath, Quad intimates that employees might be able to affix union stickers to their Quad hats, (Oral Arg. Tr. at 7:14-8:10), but in the next breath concedes that anything that might fall off the Quad hat and into the machinery, which most likely would include a sticker affixed to the cloth Quad hat, would be prohibited. (Rec. at 32:17-19.)

Instead of providing any evidence or argument on the issue presented to the Board on remand as to whether the Quad uniform policy permits employees to accessorize their Quad hats with union insignia, Quad instead attempts to misdirect the Board away from the issue presented to the Board on remand by the DC Circuit by making two arguments. First, Quad argues it should be permitted to continue to prohibit employees from wearing caps bearing union insignia, not because employees can accessorize their Quad hats with union insignia, but because Quad employees can accessorize other parts of their Quad uniform with union accessories (so long as it is not their Quad shirt or Quad pants). *See* Resp't Br. on Remand at 12. To that end, the Company offers examples such as wearing a union belt buckle, tying hair back with a rubber band with the word "Teamsters" printed on it, and wearing socks bearing union insignia as the ways employees can satisfy their Section 7 rights within the confines of the Quad uniform policy. *Id.*; Exceptions Br. at 17; (Rec. at 33:3-7). In addition to not addressing the issue remanded to the Board by the D.C. Circuit, these alternatives to accessorizing the Quad hat with union insignia do not fulfill an employee's Section 7 right to wear union insignia at the

workplace. Such allowances are so narrow in scope and unlikely to demonstrate to one's co-workers his or her union sympathies as to render the right to wear union insignia at the workplace nonexistent.

Second, Quad does not argue the merits of the issue on remand, whether employees under the Quad uniform policy can accessorize their Quad hat with union insignia, but repeatedly accuses the General Counsel and the Union of trying to expand the scope of the unfair labor practice charge beyond Quad's hat policy and onto Quad's uniform policy as a whole when they assert that the Quad uniform policy does not allow employees to accessorize their Quad caps with union insignia. Of course, it is Quad that has put its uniform policy in play by asserting as a defense to its prohibition on non-Quad hats that employees can accessorize their uniforms with union insignia. As the D.C. Circuit explained:

> Moreover, the general uniform policy allows employees to accessorize "in good taste and in accordance with all safety rules" and asserts that "[a]ll uniform requirements will be applied in accordance with applicable laws." J.A. 112. **World Color has consistently argued that the hat is part of its uniform policy** and that World Color's policies therefore facially allow an employee to adorn their Quad hat with union insignia. Indeed, **World Color made this argument before the Board, asserting that "the hat policy does not expressly prohibit employees from wearing union insignia at work, on their hat or otherwise.**"

World Color (U.S.A.) Corp, 776 F.3d at 20 (emphasis added).

Thus, it is Quad's defense to its restrictive hat policy that has made both the accessorizing of the Quad hat with union insignia and the accessorizing of the Quad uniform as a whole at issue. Quad cannot raise an affirmative defense that its restrictive hat policy is permissible because, under the Quad uniform policy, employees have the right to accessorize their uniforms with union insignia, and then claim that neither the General Counsel nor the Union can introduce evidence or make arguments that this claim is false and that employees cannot accessorize either

their Quad hats or their Quad uniforms under the actual rules enforced by Quad management. The General Counsel and the Union have the right to challenge Quad's affirmative defense.

In response to the defense of the policy that Quad articulated to the Court of Appeals, the Union submitted its Statement of Position to the Board arguing, *inter alia*, that Quad's policy violates Section 8(a)(1) of the National Labor Relations Act ("NLRA" or the "Act"), 29 U.S.C. § 158(a)(1), because the employees' ostensible right under the policy to wear union insignia by attaching items to the hat or otherwise "accessorizing in good taste" still does not provide any meaningful opportunity to engage in Section 7 conduct. *See* Union's Br. on Remand at 8-11. Specifically, the Union argued that the Employer's proposed alternatives to union hats—buttons, pins, socks, stickers, etc.—are not realistically feasible or permissible under Quad's policy, and thus, the Company's hat rule represents a Section 8(a)(1) violation. *Id.*

To determine whether maintaining a stated employment policy is an unfair labor practice, the NLRB must consider the rule at issue in the larger context of related Company policies and the "realities of the workplace." *Adtranz ABB Daimler-Bex Transp., N.A., Inc. v. NLRB*, 253 F.3d 19, 28-29 (D.C. Cir. 2001); *Aroostook Cnty. Reg'l Ophthalmology Ctr. v. NLRB*, 81 F.3d 209, 212-13 (D.C. Cir. 1996); *Lafayette Park Hotel*, 326 NLRB 824, 826 (1998).

In its brief on remand, Quad claims that by discussing the larger uniform requirements and limitations on employee accessorizing, the Union improperly expands the scope of the allegations stated in the General Counsel's Complaint and the issue before the Board on remand. Resp't Br. on Remand at 15-17. This is not the case. The Union does not allege that Quad's rules that employees wear a uniform or its prohibition on certain accessories on the workroom floor in and of themselves are necessarily violations of the Act. However, the additional restrictions that these policies impose must be considered to properly evaluate the legality of

Quad's hat policy, the Company's defense of it, and the issue on remand. The Union is arguing that the hat policy is violative of the law, because the employees have no meaningful opportunity to adorn their Quad cap, or Quad uniform for that matter, with union insignia due to the policies imposed by Quad that restrict accessorizing to the point where there are no realistic options left for employees to adorn their Quad caps or uniforms with union insignia. By discussing the uniform requirement and other such rules which limit the employees' ability to exercise their Section 7 right to wear union insignia, the Union is only addressing the context and workplace realities in which Quad's hat policy necessarily operates.

To wit, the Employer has been quick to note that, as written, the baseball cap rule does not explicitly prohibit employees from wearing union insignia on their Quad hats and that union insignia may be attached to the hat in conformance with the policy. As argued in the Union's brief on remand, however, the most cursory examination of the realities of working at the World Color facility show that the Employer's proposed alternatives to union hats are not feasible under Quad's restrictions and cannot redeem the otherwise unlawful hat policy. The hat policy at issue does not exist in a vacuum, and the NLRB accordingly should not consider it in one.

Quad's assertion that the Union should be estopped from referencing the Company's uniform policy or restrictions on accessories is contrary to established principles of litigation. It is axiomatic that when a party raises an argument, other parties may state arguments in opposition and subject it to appropriate scrutiny.

> [T]he question before the court was what limitations could be placed on a party's efforts to adduce evidence relevant to what was concededly a properly pleaded affirmative defense. The court held that the Board abused its discretion by permitting the exclusion of all evidence potentially relevant to the defense. In so holding, the court stated that, "[w]hile relevance is certainly not the only consideration when deciding what evidence is admissible, an affirmative defense would be illusory if all evidence that could be used to prove it were categorically excluded."

Flaum Appetizing Corp., 357 NLRB No. 162 (2011) (internal citations omitted).

A raised argument may properly be considered by the adjudicating body. Here, the Employer has attempted to defend its prohibition on union caps by claiming that its employees are still free under Company policy to accessorize with union insignia. Exceptions Br. at 17; Rec. at 32:17-33:7; Oral Arg. Tr. at 7:6-8; 53:19-24. The Union has advanced arguments in opposition to this defense, and in response, the Employer now argues that any reference to Company policy governing how employees may accessorize with union insignia is beyond the scope of the case and not properly before the Board. Resp't Br. on Remand at 15-17. The Company uses quotations taken out-of-context from proceedings before the Administrative Law Judge ("ALJ") and earlier briefs to suggest that the Union now improperly alleges, in the first instance, that Quad policies beyond the baseball cap policy are also Section 8(a)(1) violations.[1] This is a mischaracterization of the Union's position and an attempt to preclude the Board from properly scrutinizing Quad's defense. Quad cannot legitimately argue that the restrictions on such accessorizing are beyond the scope of the issues before the Board after Quad has argued at length that the availability of accessorizing with union insignia saves its hat policy.

Based on the issue presented to the Board on remand by the D.C. Circuit, whether the Quad uniform policy permits employees to accessorize their Quad hats with union insignia, the Board must decide whether Quad's uniform policy permits employees to accessorize their Quad

[1] *See, e.g.*, *id.* at 16 (quoting (Rec. 37:18-38:1) to suggest that because Counsel for the General Counsel conceded that Quad may lawfully require its employees to wear a uniform, the Board is now precluded from reviewing the uniform policy in any form), *id.* at 16 (quoting Counsel for the General Counsel's remarks at (Rec. 103:25-104:1) that the uniform policy is not in dispute, but omitting the adjacent explanation about the relevancy of testimony about the uniform policy), *id.* at 16 (claiming that the General Counsel admitted that the uniform policy "has never been at issue and was not part of the complaint" by quoting, ironically, from a section of the NLRB's appellate brief arguing that that "the Company mischaracterizes the General Counsel's position . . . by stating that the 'Government conceded that the uniform policy is lawful'").

hats with union insignia, whether Quad employees would reasonably construe the Quad uniform policy to prohibit this Section 7 activity, or whether the case needs to be remanded to the ALJ for further development of the record in order to answer the first two issues. These issues can only be answered by looking the realities of this workplace and the testimony as to what is prohibited on the Quad hat and uniform. As such, all of the arguments and evidence presented by the General Counsel and the Union are properly to be considered by the Board when evaluating these issues.

CONCLUSION

For the reasons stated herein, the Board should reaffirm its ruling that the Quad Graphics' hat policy at the World Color facility is restrictive of employees Section 7 rights in violation of Section 8(a)(1) of the Act.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16th day of June, 2015, the foregoing Charging Party's Reply to Respondent's Statement of Postion was filed electronically with the National Labor Relations Board and served upon the following individuals via email:

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